Simon v. Adzilla, Inc [New Media] et al

Doc. 137 Att. 13

EXHIBIT V-5-S

Dockets.Justia.com

start_box ("Introduction"); ?>
Welcome to Thefacebook, an online directory that connects people through networks of academic centers. Thefacebook service
is operated by Thefacebook network ("Thefacebook"). By using Thefacebook web site (the "Web site") you agree to be bound by these Terms of Use (this "Agreement"). If you wish to become a Member and communicate with other Members and make use of Thefacebook service (the "Service"), read these Terms of Use and indicate your acceptance of them by following the instructions on the registration page.
<p>
This Agreement sets out the legally binding terms of your use of the Web site and your membership in the Service and may be modified by Thefacebook at any time and without prior notice, such modifications to be effective upon posting by Thefacebook on the Web site. This Agreement includes Thefacebook's acceptable use policy for content posted on the web site, Thefacebook's Privacy Policy, and any notices regarding the Web site.
<? end_box();

start_box ("Eligibility"); ?>
You must be eighteen or over to register as a member of Thefacebook or use the Web site. Membership in the Service is void where prohibited. By using the Web site, you represent and warrant that you have the right, authority, and capacity to enter into this Agreement and to abide by all of the terms and conditions of this Agreement.
<? end_box ();

start_box ("Term"); ?>
This Agreement will remain in full force and effect while you use the Web site and/or are a Member. Thefacebook may terminate your membership for any reason, at any time. Even after membership is terminated, this Agreement will remain in effect.
<? end_box ();

start_box ("Non Commercial Use by Members"); ?>
The Web site is for the personal use of individual Members only and may not be used in connection with any commercial endeavors. Organizations, companies, and/or businesses may not become Members and should not use the Service or the Web site for any purpose. Illegal and/or unauthorized uses of the Web site, including collecting email addresses or other contact information of members by electronic or other means for the purpose of sending unsolicited email and unauthorized framing of or linking to the Web site will be investigated, and appropriate legal action will be taken, including without limitation, civil, criminal, and injunctive redress.
<? end_box ();

start_box ("Proprietary Rights in Content on Thefacebook"); ?>
Thefacebook owns and retains all proprietary rights in the Web site and the Service. The Web site contains the copyrighted material, trademarks, and other proprietary information of Thefacebook, and its licensors. Except for that information which is in the public domain or for which you have been given written permission, you may not copy, modify, publish, transmit, distribute, perform, display, or sell any such proprietary information.
<? end_box ();

start_box ("Content Posted on the Site"); ?>
You understand and agree that Thefacebook may review and delete any content, photos or profiles (collectively "Content") that in the sole judgement of Thefacebook violate this Agreement of which might be offensive, illegal, or that might violate the rights, harm, or threaten the safety of Members.
<p>
Your profile must describe you, an individual person. Examples of inappropriate profiles include, but are not limited to, profiles that

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purport to represent an animal, place, inanimate objects, fictional
character, or real individual who is not you.
<p>
You are solely responsible for the Content that you publish or display
(hereinafter, "post") on the Service, or transmit to other Members.
<p>By posting Content to any public area of Thefacebook, you automatically
grant, and you represent and warrant that you have the right to grant, to
Thefacebook an irrevocable, perpetual, non-exclusive, fully paid, worldwide
license to use, copy, perform, display, and distribute such information
and content and to prepare derivative works of, or incorporate into other
works, such information and content, and to grant and authorize sublicenses
of the foregoing.
<p>
Thefacebook reserves the right to investigate and take appropriate legal
action in its sole discretion against anyone who violates this provision,
including without limitation, removing the offending communication from
the Service and terminating the membership of such violators.  Even though
such use is strictly prohibited, there is a small chance that you might
become exposed to such items and you further waive your right to any
damages (from any party) related to such exposure.
<p>
You must use the Service in a manner consistent with any and all applicable
laws and regulations.
<p>
You may not engage in advertising to, or solicitation of, other Members to
buy or sell any products or services through the Service.  You may not
transmit any chain letters or junk email to other members.  Although
Thefacebook cannot monitor the conduct of its members off the Web site, it
is also a violation of these rules to use any information obtained from the
Service in order to harass, abuse, or harm another person, or in order to
advertise to, solicit, or sell to any member without their prior consent.
<? end_box ();

start_box ("Copyright Policy"); ?>
You may not post, distribute, or reproduce in any way any copyrighted
material, trademarks, or other proprietary information without obtaining
the prior written consent of the owner of such proprietary rights. Without
limiting the foregoing, if you believe that your work has been copied and
posted on the Service in a way that constitutes copyright infringement,
please provide us with the following information: an electronic or
physical signature of the person authorized to act on behalf of the owner
of the copyright interest; a description of the copyrighted work that you
claim has been infringed; a description of where the material that you
claim is infringing is located on the Web site; your address, telephone
number, and email address; a written statement by you that you have a
good faith belief that the disputed use is not authorized by the copyright
owner, its agent, or the law; a statement by you, made under penalty of
perjury, that the above information in your notice is accurate and that
you are the copyright owner or authorized to act on the copyright owner's
behalf. Thefacebook can be reached at <a href='mailto:info@thefacebook.com'>
info@thefacebook.com</a>.
<? end_box ();

start_box ("Member Disputes"); ?>
You are solely responsible for your interactions with other Thefacebook
Members. Thefacebook reserves the right, but has no obligation, to
monitor disputes between you and other Members.
<? end_box ();

start_box ("Privacy"); ?>
Use of the Web site and/or the Service is also governed by our
<a href='policy.php'>Privacy Policy</a>.
<? end_box ();
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start_box ("Disclaimers"); ?>
Thefacebook is not responsible for any incorrect or inaccurate Content posted on the Web site or in connection with the Service, whether caused by users of the Web site, Members or by any of the equipment or programming associated with or utilized in the Service. Thefacebook is not responsible for the conduct, whether online or offline, of any user of the Web site or Member of the Service. Thefacebook assumes no responsibility for any error, omission, interruption, deletion, defect, delay in operation or transmission, communications line failure, theft or destruction or unauthorized access to, or alteration of, user or Member communications. Thefacebook is not responsible for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment, software, failure of email or players on account of technical problems or traffic congestion on the Internet or at any web site or combination thereof, including injury or damage to users and/or Members or to any other person's computer related to or resulting from participating or downloading materials in connection with the Web and/or in connection with the Service. Under no circumstances will Thefacebook be responsible for any loss or damage, including personal injury or death, resulting from anyone's use of the Web site or the Service, any Content posted on the Web site or transmitted to Members, or any interactions between users of the Web site, whether online or offline. The Web site and the Service are provided "AS-IS" and Thefacebook expressly disclaims any warranty of fitness for a particular purpose or non-infringement. Thefacebook cannot guarantee and does not promise any specific results from use of the Web site and/or the Service. The service may be temporarily unavailable from time to time for maintenance or other reasons. No advice or information, whether oral or written, obtained by user from Thefacebook or through or from the service shall create any warranty not expressly stated herein.
<? end_box();

start_box ("Limitation on Liability"); ?>
Except in jurisdictions where such provisions are restricted, in no event will Thefacebook be liable to you or any third person for any indirect, consequential, exemplary, incidental, special or punitive damages, including also lost profits arising from your use of the Web site or the Service, even if Thefacebook has been advised of the possibility of such damages. Notwithstanding anything to the contrary contained herein, Thefacebook's liability to you for any cause whatsoever, and regardless of the form of the action, will at all times be limited to the amount paid, if any, by you to Thefacebook for the Service during the term of membership.
<? end_box ();

start_box ("Disputes"); ?>
If there is any dispute about or involving the Web site and/or the Service, by using the Web site, you agree that the dispute will be governed by the laws of the State of Massachusetts without regard to its conflict of law provisions. You agree to personal jurisdiction by and venue in the state and federal courts of the State of Massachusetts, City of Boston.
<? end_box ();

start_box ("Indemnity"); ?>
You agree to indemnify and hold Thefacebook, its subsidiaries, affiliates, officers, agents, and other partners and employees, harmless from any loss, liability, claim, or demand, including reasonable attorney's fees, made by any third party due to or arising out of your use of the Service in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above. If you are a California resident, You waive California Civil Code Section 1542, which says

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"A general release does not extend to claims which the creditor does not
know or suspect to exist in his favor at the time of executing the release,
which, if known by him must have materially affected his settlement with
the debtor."
<? end_box ();

start_box ("No Agency"); ?>
There is no agency, partnership, joint venture, employee-employer or
franchisor-franchisee relationship between Thefacebook and any User of the
Service.
<? end_box ();

start_box ("Other"); ?>
This Agreement, accepted upon use of the Web site and further affirmed by
becoming a Member of the Service, contains the entire agreement between
you and Thefacebook regarding the use of the Web site and/or the Service.
The failure of Thefacebook to exercise or enforce any right or provision
of these Terms of Use shall not constitute a waiver of such right or
provision. If any provision of this Agreement is held invalid, the
remainder of this Agreement shall continue in full force and effect. The
section titles in these Terms of Use are for convenience only and have no
legal or contractual effect.
<? end_box ();

start_box ("Questions"); ?>
Please <a href='contact.php'>contact us</a> with any questions regarding
this agreement.
<? end_box ();
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make_blue_bar("Coverage");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
This privacy statement covers the site www.thefacebook.com.  Because we want to
demonstrate our commitment to our users' privacy, we will disclose our information
and privacy practices below. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("About Thefacebook and the Information We Collect");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
Thefacebook is an online directory and social networking community that helps
people find friends and other people.  To accomplish this, our users create their
own profiles and privacy settings, and some personal information we ask for is
displayed to people in the groups specified in the users' privacy settings. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Information Collected by Thefacebook");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
Thefacebook collects user-submitted account information such as name and email
address to identify users and send notifications related to use of the site.
Thefacebook also collects user-submitted profile information such as gender,
  field, location, courses, etc.
<p>Thefacebook also collects information that is not personally identifiable and
not submitted directly by users, such as browser type and IP address.  This
information is gathered for all users to the site.
<p>Thefacebook collects information from other sources, such as newspapers and
instant messaging services.  This information is gathered regardless of use of
the site. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Use of Information Obtained by Thefacebook");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
Profile information, as well as name, email and photo, are displayed to people in
the
groups specified in a user's privacy settings to support the function of the
site.  Except when inviting a friend to join the site, a user's name and email will
never be given to anyone outside the site.  No information submitted to Thefacebook
will be available to any user of the site who does not belong to at least one of the
groups specified in a user's privacy settings.
<p>We use server, IP and browser type for site administration.  We also use
information
not directly submitted to Thefacebook by users to supplement users' profiles unless
they specify that they do not want this done in their privacy settings. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Spam Policy");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
Email addresses will never be sold to anyone, and they will not be used for spam or
any other purpose outside of the site itself. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";
print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Links");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
This site may contain links to other websites.  Thefacebook is not responsible for
the privacy practices of other web sites.  We encourage our users to be aware when
they leave our site and to read the privacy statements of each and every web site
that
collects personally identifiable information.  This privacy statement applies solely
to information collected by this web site. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Use of Cookies");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
A cookie is a piece of data stored on the user's computer tied to information about
the user.  We use session ID cookies to confirm that users are logged in.  These
cookies
terminate once the users close the browser.  We do not and will not use cookies to
collect
private information from any user. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Third Party Advertising");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
Advertisements that appear on this web site are delivered to users by our
advertising
partners.  Our advertising partners may set cookies.  Doing this allows the
advertising
network to recognize your computer each time they send you an advertisement.  In
this
way, they may compile information about where you, or others who are using your
computer,
saw their advertisements and determine which advertisements are clicked.  This
information
allows an advertising network to deliver targeted advertisements that they believe
will be
of most interest to you.  Thefacebook does not have access to or control of the
cookies
that may be placed by the third party advertising servers of ad networks.
<p>This privacy statement covers the use of cookies by Thefacebook and does not
cover
the use of cookies by any of its advertisers. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Changing or Removing Information");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
Thefacebook users may modify or remove any of their personal information at any time
by logging into their account.  Information will be updated immediately and old
information will never be displayed to any user of the site. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
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make_blue_bar("Security");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
Thefacebook accounts are password-protected.  This web site takes every precaution
to
protect our users' information.  Passwords are stored in hashed form in our
database,
and different sections of users' profiles are stored in different parts of our
database
to separate access to all of the information and make it more difficult to piece
everything together.  If you have any questions about the security of our web site,
please <a href='contact.php'>contact us</a>. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Changes in Our Privacy Policy");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
We reserve the right to change our privacy policy at any time.  If we do this, we
will post
the changes on our web site so our users are always aware of what information we
collect,
how we use it, and under what circumstances, if any, we disclose it.  If we are
going to
use users' personally identifiable information in a manner different from that
stated at
the time of collection, we will notify users via email. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";

print "<center><table class='bordertable' cellspacing=0 cellpadding=0
width=$sub_width><tr><td>";
make_blue_bar("Contacting the Web Site");
print "&nbsp;<br><center><table cellspacing=0 cellpadding=2 border=0
width=95%><tr><td>"; ?>
If you have any questions about this privacy statement, the practices of this site,
or
your dealings with this web site, please <a href='contact.php'>contact us</a>. <?
print "<br>&nbsp;</td></tr></table></td></tr></table><p>";
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